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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 113

UNITED STATES OF AMERICA, *Petitioner*,

v.

HOMER O. CORRELL and DOROTHY CORRELL,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF MANUFACTURING CHEMISTS' ASSOCIATION, INC., AS AMICUS CURIAE, IN SUPPORT OF RESPONDENTS

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The Manufacturing Chemists' Association, Inc., appearing as amicus curiae, files this brief in support of respondents. This brief is filed pursuant to Rule 42 of the RULES of the Supreme Court of the United States. Both counsel for petitioner and counsel for

respondents have stated that the respective parties consent to the filing of this brief.

INTEREST OF AMICUS CURIAE

The Manufacturing Chemists' Association is incorporated under the laws of the State of New York. It is a nonprofit membership corporation (New York) with 184 U. S. member corporations, large and small, which account for more than 90 percent of the productive capacity of the chemical industry in this country. Its by-laws require that eligible members shall be manufacturers of chemicals who sell to others a substantial portion of the chemicals they produce. The industry carries on its activities throughout the United States and in foreign countries.

All members of the Association are vitally interested in the question involved herein, namely:

> "Whether amounts expended for breakfast and lunch while on the road constitute deductible 'traveling expenses * * * [incurred] while away from home in the pursuit of a trade or business' within the meaning of section 162(a)(2) of the 1954 Code."

The question presented in this case deeply concerns the chemical industry for the Court's answer will have important consequences to its member companies and employees with respect to travel of its employees. Many thousands of employees of member companies travel on their employers' business during a calendar year and it is to be anticipated that the number will progressively increase. The membership of the Association favors the result of the decision of the Sixth Circuit Court of Appeals, and is disturbed as to the consequences of a reversal of this decision.

ARGUMENT

The Association endorses the arguments set forth in the brief of the respondents. There is no doubt that the taxpayer was, in the language of section 162 (a)(2) of the Internal Revenue Code of 1954, "away from home in the pursuit of a trade or business," and pursuant to such section is entitled for taxable years involved in this case to deduct the entire amount expended for his meals.

The respondents' brief adequately analyzes the Court decisions which have rejected the government's interpretation of the "while away from home" test. There is no need again to review these decisions of *United States* v. *Morelan,* 356 Fed. 2d 199 (1966); *Hanson* v. *Commissioner,* 298 Fed. 2d 391 (1962); *Chandler* v. *Commissioner,* 226 Fed. 2d 467 (1955); *Williams* v. *Patterson,* 286 Fed. 2d 333 (1961); *Scott* v. *Kelm,* 110 Fed. Supp. 819 (1953); *Amoroso* v. *Commissioner,* 193 Fed. 2d 583 (1952), and *Kenneth Waters* v. *Commissioner,* 12 T.C. 414 (1949).

The brief for the petitioner emphasizes that the Internal Revenue Service has taken a position over a substantial period of time that in order to qualify as being "away from home" the taxpayer must remain away overnight. However, it is clear that an interpretation of the Internal Revenue Service with regard to an issue is always subject to review by the courts. In instances too numerous for citation, this Court has held invalid rulings and regulations of the Commissioner when it believed them to be an improper interpretation of the law. As recently as May 5, 1967, this Court held in *Northeastern Pennsylvania National Bank and Trust Company, Petitioner* v. *United States,* No. 637

(October Term, 1966), that the rule laid down by the Treasury Department in section 20.2056(b)-5(c) of its regulations defining a "specific portion" of an interest in property for purposes of the marital deduction provisions of the estate tax was invalid since the rule was too restrictive in light of the intent of Congress. For other cases to this effect, see: *Commissioner* v. *Acker,* 361 U.S. 87, 93 (1959); *United States* v. *Calamaro,* 354 U.S. 351, 358 (1957); *Haggar Co.* v. *Helvering,* 308 U.S. 389, 398 (1940); *Koshland* v. *Helvering,* 298 U.S. 441, 466 (1936).

The petitioner also claims that since Congress has considered "at three separate points the Commissioner's overnight rule" it is persuasive evidence of tacit Congressional approval. The reenactment by the Congress of section 162(a)(2) without change does not mean that the Congress approved the government's interpretation as proper under present law. See *Commissioner* v. *Glenshaw Glass Co.,* 348 U.S. 426, 432 (1955); *Helvering* v. *Reynolds,* 313 U.S. 428, 432 (1941); and *Massachusetts Trustees* v. *U. S.,* 377 U.S. 235, 241 (1964). The fact that Congress adopted section 120 and section 62(2)(c) to take care of certain specific problems does not indicate that the Congress focused on the basic question. Furthermore, the taxpayer whose testimony is set forth in 1 House Hearings on General Revisions (1953) Cong. 1st Sess., 214-219 (referred to at page 17 of Government's brief), stated that there was no basis for the Internal Revenue Service position, and that in litigation the businessman would more than likely prevail. Thus, his testimony pointed out to the Congress that the correct interpretation of the law is contrary to the Internal Revenue Service's position. It might logically be concluded that Congress decided to leave this issue to the Courts.

As a matter of fact, even prior to the enactment of the 1954 Code the U. S. Tax Court had, in connection with the deductibility of travel expenses under section 22(n)(2) relating to expenses of travel while away from home, expressly rejected the overnight rule in *Kenneth Waters,* 12 T.C. 414 (1949). On page 417 the Court stated:

> There is no connotation that the trip must be an overnight one, nor do we think Congress intended such a connotation.

This same conclusion as to travel expenses was reached before 1954 in *Scott* v. *Kelm,* 110 F. Supp. 18 (1953).

Although the Commissioner has for many years applied the "overnight" rule, the Court of Appeals for the Sixth Circuit correctly points out that it was not until 1958 that the Treasury Department referred to it in its regulations. On August 22, 1958, section 1.162-17 was promulgated by Treasury Decision 6306. The purpose of this section was to prescribe rules for the reporting and substantiation of traveling and other business expenses on employee income tax returns. This section, therefore, cannot be said to be an interpretative one but only an administrative or procedural regulation designed for guidance to taxpayers in making out tax returns.

On Page 20, petitioner's brief makes a statement to the effect that Congressional review and reenactment of a tax statute after being informed of the Commissioner's interpretation provides persuasive evidence of tacit Congressional approval. The brief then refers to four cases in support of this statement. However, these cases do not seem to be pertinent to the facts in the instant proceeding. In *Commissioner* v. *Bilder,*

369 U.S. 499, 505 (1962) this Court pointed out that the House and Senate Committee Reports in connection with the enactment of the 1954 Code specifically directed themselves to clarifying existing law as to the issue relating to deductions for medical expenses. *Commissioner* v. *Lester*, 366 U.S. 299, 305 (1961), involved the deductibility of payments made to the divorced wife of the taxpayer, and, in holding for the taxpayer, this Court refused to agree with the Commissioner's claimed consistent administrative determination since "there was such a contrariety of opinion among the Courts of Appeal." In *White* v. *Winchester Country Club*, 315 U.S. 32, 29 (1942), relating to taxability of club dues, the Court stressed that the Congress actually changed the law by the Revenue Act of 1941 which change was considered as supporting the validity of the Treasury interpretation. *Harrison* v. *Northern Trust Company*, 317 U.S. 476 (1943) involved a Federal estate tax issue with respect to which the legislative history in the House and Senate Committee Reports clearly and directly indicated the Congressional intent applicable to the proper deduction for bequests to charity.

There is no doubt that equality of treatment is a fundamental goal of our system of taxation as indicated in the petitioner's brief. However, the result below, contrary to the petitioner's statement, does not cause unequal treatment of similarly situated taxpayers. Individuals who travel substantial distances necessitating the expenditure for meals while traveling should all obtain a deduction for those expenditures while away from home as provided in section 162(a)(2). Unequal treatment is accorded those taxpayers if an arbitrary line, such as the overnight rule, is drawn

by the courts. The cases cited previously rejecting the Commissioner's overnight rule adequately and convincingly point out that a two-day versus a one-day rule does not fairly draw that line. Experience by those who travel considerable distances such as a one-day jet trip between New York and Chicago indicates that the expenses for meals significantly exceed the costs of comparable meals by those who remain at their home base. The petitioner is not correct in alleging that the commuter, respondent, and any one-day traveler are all in identical economic positions. It is recognized that each taxpayer's circumstances will have to be considered in applying the test as to whether the taxpayer is away from home. This stems from the intent and coverage of section 162(a)(2). The deductibility of a taxpayer's meals should not be denied him because some judgment has to be exercised in interpreting the provisions of the law.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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